

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

March 14, 2011

N440 State Mail
Justin Wilson
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: State v. Justin Wilson
Defendant ID# 0911019557

Dear Mr. Wilson:

On December 14, 2011, Mr. Wilson ("defendant") filed a Post Conviction Motion pursuant to Superior Court Criminal Rule 61 ("Rule 61"). The record was expanded pursuant to Rule 61(g) to address the claim of ineffective assistance of counsel. The affidavits have been filed by counsel and defendant. Additionally, on February 1, 2011, the Court gave the defendant an additional month to supplement his motion. The end date was moved from February 18, 2011, to March 18, 2011. On February 25, 2011, the Court received a copy of the defendant's medical records at Sussex Correctional Institution, per his request. The Motion is now ripe for a decision.

After considering the motion, the documents and the letters in the file, the affidavits, the transcript, and the Rule 61(g) submissions, the Court is satisfied the motion must be denied.

BACKGROUND

Defendant was Indicted on four counts of Robbery in the First Degree occurring on two different dates, with two alleged victims on each date. Defendant was also charged with weapons offenses and wearing a disguise during the robberies. Defendant was charged with armed robbery of a liquor store and then doing it again weeks later. There were two persons in the store at each time.

On March 15, 2010, defendant pled guilty to one count of Robbery in the First Degree, one count of Robbery in the Second Degree, and one count of Possession of a Deadly Weapon by a Person Prohibited.

The Court was not comfortable with the immediate sentence recommendation of four years and ordered a pre-sentence investigation.

On April 23, 2010, defendant received a sentence resulting in twenty years incarceration followed by four years of probation.

There was no appeal. Defense counsel filed a timely Motion to Modify/Reduce the sentence. In the Court's July 22, 2010, denial of the motion the Court noted the following:

“I do appreciate your zealous advocacy for this young man. I can also appreciate your concern and frustration at having negotiated a favorable recommendation, and then have me come along and wreck the train.

It is rare that the Court takes such drastic action. Mr. Wilson faced up to 38 years in jail. In light of his pattern of violent conduct and an apparent like of firearms, it was my opinion that community safety dictated he remain off the streets for a long time.”

The Court, at sentencing, noted the prior crimes of violence involving guns and one robbery with a knife. As a juvenile, defendant pointed and fired a gun at a stranger when he told him to empty his pockets. Defendant pled to aggravated menacing. Then in 2005, defendant pled to a minor assault in Maryland and then to a separate assault and weapons offense by threatening a stranger with a knife, allegedly for money. The defendant was sentenced to Boot Camp, however, he spent two years in jail due to being kicked out of Boot Camp for fighting a second time. Then, defendant pled guilty to two Reckless Endangering in the First Degree offenses and a weapons charge, for shooting at two strangers in Wilmington.

RULE 61 CLAIMS

Defendant alleges the following:

1. A violation of due process arising from defendant's inability to comprehend the Court proceeding because of his medications.

2. A failure of the Court to fully inform Defendant of the consequences of the plea including mandatory time and parole ineligibility.

3. The sentence violates the Eight Amendment (U.S. Constitution) because its length is cruel and unusual punishment, especially since the State “contracted” for a lesser sentence.

4. Ineffective assistance of counsel;

(a) Counsel was not present at every stage of the proceedings, i.e. he was not present during the pre-sentence investigation;

(b) Defendant was not afforded full disclosure of the pre-sentence report and had no right to read it;

(c) Counsel did not inform defendant, prior to signing the plea agreement, of a statement by the pre-sentence officer, to the effect if the recommendation is not accepted by the Court, then a more harsher sentence would be recommended. Had defendant know this prior to signing the plea agreement he would have refused the plea;

(d) Defendant contends he gave his mother a durable Power of Attorney and his attorney disregarded it by not giving his mother full authority for all decisions;

(e) As a “lawful”minor, defendant claims he was coerced into signing the plea agreement;

(f) “Judges abuse of discretion by way of mental reservation”. The Court does not understand this claim other then it argues the Court exceeded the recommendation (plea recommendation) and made a comment about same.

The ineffective assistance of counsel claims must meet the test of *Strickland v. Washington*, 466 U.S. 668 (1984). Defendant must establish that his attorney, through error or omission, committed a professional mistake that actually prejudiced the defendant. He must prove both error and prejudice or his claim fails. In this case, he would have to establish an error or omission that resulted in the defendant’s decision to plea guilty. *Albury v. State*, 551 A2d 53 (Del.1988). Defendant would also have to establish that his claims about the pre-sentence report caused him prejudice.

RULE 61(g)

Defendant’s attorney filed an affidavit as to the following matters:

1. At no time did defendant’s attorney have any sense that medication or anything else interfered in their communications.

2. Defendant’s attorney reports he thoroughly reviewed the pre-sentence report and its findings with the defendant prior to sentencing.

3. Defendant’s attorney told the defendant he had no right to have a copy of the pre-sentence investigation report. Defendant’s attorney reviewed the report with the defendant. Defendant’s attorney has no recollection of inaccurate information. The defendant was not told he could not review it.

4. Defendant’s attorney has no information as to the claim about statements made by a pre-sentence investigator prior to the plea agreement. [The Court would assume that Defendant’s attorney is as confused as the Court is in regard to this claim because the pre-sentence investigation was not ordered until after the guilty plea was entered].

5. Defendant’s attorney reports he kept the defendant’s mother fully informed about developments of the case including a review of the discovery.

6. Defendant's attorney denies coercing the defendant into entering into the plea agreement or guilty plea.

7. Defendant's attorney did inform the defendant that plea agreements are generally accepted, but that the plea itself was not an actual "promise" and the Judge sets the sentence. [This was in response to defendant's claim that he told him 90% of the time the Judge accepts the plea agreement].

8. Defendant's attorney reports that his work on behalf of the defendant was done in the best interest of the defendant.

Defendant responded to his attorney's representation as follows:

1. Defendant's attorney coerced defendant into entering the plea because of the discussions he could receive thirty eight years if convicted by the jury. [This is incorrect. If convicted by the jury of just the robbery charges the defendant faced one hundred years. The charges the defendant pled guilty to had a maximum of thirty eight years]. Defendant claims his attorney's denial of ineffective assistance of counsel is self-serving, representations to save his own reputation.

2. Defendant claims that throughout the proceeding (before, during, and after) he was on two medications (Prozac and Trazodone) which altered his ability to comprehend the severity of the charges and ultimately waive his rights.

3. Defendant claims that his own study of the pre-sentence report would have brought to light any inaccurate information.

4. Defendant continues to argue that his mother should have made the decisions regarding his case. Additionally, defendant argues that giving his mother Power of Attorney is evidence he did not comprehend the consequences of his actions.

5. Defendant claims his attorney did not come up with a defense therefore, defendant was coerced into pleading guilty.

6. Defendant claims his attorney did "double talk". Defendant claims his attorney told him he thought there was a 90% chance the Judge would accept the plea recommendation.

THE TRANSCRIPTS

Defendant told the Court he would answer the Court's questions truthfully. Defendant told the Court he was 23 years old at the time of the plea, graduated from high school, and had consumed no alcohol or medication in the past twenty four hours.

Defendant informed the Court he understood his rights and that it was his decision to plead guilty. The rights defendant gave up by pleading guilty were fully explored.

The sentencing possibilities were fully explored. Defendant knew the sentence had to begin with a mandatory three years and could go up to thirty eight years.

Defendant knew the recommendation was only a recommendation and that if the Judge did not follow the recommendation defendant would not get a “do-over”. Defendant acknowledged the plea agreement was a recommendation and not a promise.

Defendant told the Court that no one, including his attorney, was forcing him to plea guilty. This decision was the defendant’s.

Defendant was satisfied with his attorney and had no complaints about how his attorney handled his case. Defendant informed the Court he had sufficient time to talk with his attorney about the nature of the charges and what he was doing in regard to the guilty plea.

Defendant told the Court he was guilty of all three charges.

Specifically, the Court asked defendant if he had any issues or problems with his attorney, the Court, his family, etc. to speak up now or forever hold his peace. Defendant had no issues or problems with anyone.

Defendant asked the Court to accept the plea. The Court accepted the plea.

Upon learning that there was a pending pre-sentence investigation in New Castle County Superior Court, for two counts of Reckless Endangering and a weapons offense, the Court postponed sentencing to get that report, and to have the Sussex County Investigative Services Office supplement it, as to the Sussex County charges.

GUILTY PLEA FORM

Defendant told the Court he went through this guilty plea form line by line with his attorney, understood it, had no questions, and filled it in accurately and honestly.

The form evidences that the defendant was not under the influence of drugs or alcohol, the defendant knew he faced a sentence of three to thirty eight years, the defendant was satisfied with his attorney, and the defendant knew he was giving up his trial rights.

THE SENTENCE

Defendant’s attorney spoke forcefully on defendant’s behalf at sentencing. Defendant’s attorney noted that with defendant’s diagnosis of attention deficit disorder there was sometimes a difficulty in controlling impulsive behaviors. Defendant’s attorney noted defendant’s strong family ties and the letters written on defendant’s behalf from church and family members.

Defendant’s attorney advised that defendant had some mental health problems for which he was taking Prozac and Trazodone.

Defendant's attorney advised defendant had owned up to his crimes and argued that the acceptance of responsibility was a strong mitigator.

Defendant's attorney also asked the Court to consider the plea agreement recommendation.

In sum, defendant's attorney argued zealously and effectively on defendant's behalf.

Defendant told the Court he was remorseful for what he did. Defendant apologized to the victims. Defendant told the Court he had goals in his life and finally asked for mercy.

The court reviewed with the defendant his prior record, his propensity for violence and his use of guns to intimidate and rob. The Court concluded that the defendant is a violent person, that defendant has a violent nature. Defendant has been in trouble before but continued with his violent conduct. That is why the defendant received the twenty years, to take him off the streets before someone was killed.

PRE-SENTENCE INVESTIGATION

The contents of the report that went against the defendant was his record and the reports as to his conduct in Wilmington, involving a gun and reckless endangering.

The letters and recommendations defendant's family and friends, wrote on defendant's behalf were considered, but their hopes for defendant could not outweigh the decisions the defendant made as to criminal violence.

MEDICAL RECORDS

Defendant signed a release that directed the medical staff of Sussex Correctional Institution to forward, to the Court, a copy of his records. The Court has received them. The medical records do not support the defendant's present claim that his medications influenced his ability to comprehend the plea negotiations and the entry of his plea. To the contrary, the medical reports support the conclusion that defendant knew exactly what he was doing as to the guilty plea decision.

The records evidence defendant had a problem with sleeping and dreams. Defendant's diagnosis included situational anxiety and adjustment disorder with depressive mood. Prozac and Trazadone were prescribed.

Throughout the records it is noted that defendant was alert, his insight and judgement were good, and his thought processes was appropriate.

Defendant did have a mental health diagnosis, but was not suffering from any "acute" mental health problem. Defendant's mental health issues were being addressed.

Noteworthy, is the March 17, 2010, note in the medical file taken two days after the guilty plea. Defendant commented he wanted to work on his anger issues. The report included the following: "He discussed his Court appearance on March 15, 2010. I/M reports satisfaction thus far w/ legal matters and is hopeful".

DECISION

The Court is satisfied that defendant spoke honestly and truthfully at the entry of the plea and at sentencing. The Court is satisfied that defendant was taking prescribed medication, but he was not "under the influence". Defendant fully comprehended his situation. Defendant's attorney spent time with the defendant and never had concerns about his ability to understand and to comprehend. The Court saw the defendant twice and had conversations with him. Defendant's responses to the questions are evidence that he comprehended and understood the decisions he was making and the consequences of his decisions.

Prior to the guilty plea, when defendant's attorney informed defendant that Judges usually go along with the plea recommendation 90% of the time, he was correct. The percentage is probably much higher, but defendant's attorney also told him the Judge did not have to follow the recommendation and defendant could go to jail for thirty eight years. The Court told the defendant if the Court did not follow the recommendation he would not get a "do over". Defendant knew the Judge made the final sentencing decision. The defendant's beef is about the twenty year sentence, and not his decision to pled guilty.

Defendant and defendant's attorney report different recollections, but the transcripts wherein defendant told the Court he would be truthful, support the Courts accounts and his attorney's recollection.

Defendant has not met his burden to establish his attorney did not review the pre-sentence report with him and did not zealously represent him at sentencing. The Court is satisfied defendant's attorney reviewed the report with defendant. The Court has already noted defendant's attorney's zealous work for defendant. Defendant's attorney was his attorney, not defendant's mother's attorney. Defendant's mother could not make the decisions involving defendant's charges and whether to accept the plea or go to trial. Defendant was twenty three years of age at the time of the guilty plea.

The Court finds that defendant's attorney did the best he could, to make the best out of a bad situation. Unfortunately, defendant's attorney could not help defendant in regard to what the Court found so concerning, the defendant's violent record.

The record reflects defendant knew and understood the plea, and the consequences of the plea. Defendant was fully informed of all the information to make his decision. Defendant knew the mandatory time as well as the maximum sentence. Defendant was not coerced to enter the plea.

The maximum sentence was thirty eight years. Therefore, a sentence of twenty years can not be cruel and unusual punishment.

Defendant's motion is DENIED.

Yours very truly,

/s/ T. Henley Graves

THG:pac

cc: Prothonotary
Richard Lyle, Esquire, Office of the Public Defender
Peggy Marshall, Esquire, Department of Justice